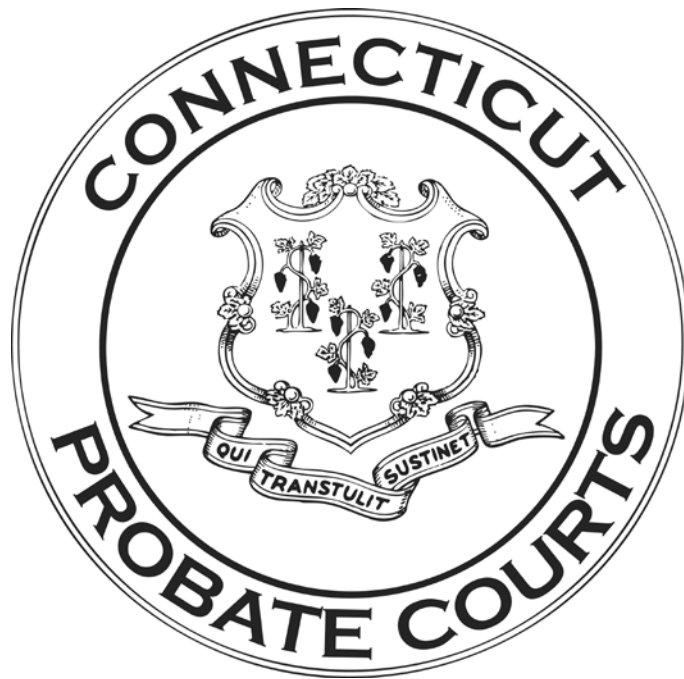


# **PROBATE COURT USER GUIDE**

## **TERMINATION OF PARENTAL RIGHTS AND ADOPTIONS**



PUBLISHED BY  
OFFICE OF THE  
PROBATE COURT ADMINISTRATOR  
STATE OF CONNECTICUT

COMPLIMENTS OF YOUR LOCAL PROBATE COURT

## **Introduction**

The termination of parental rights and adoptions are among the matters within the jurisdiction of Connecticut Probate Courts.

This user guide was designed to explain the basic aspects of a complex body of laws that most people are not familiar with. It is not a complete review of the subject, but a guide to help those with commonly asked questions.

Your local Probate Court can assist you with specific procedural questions. For problems related to substantive matters, professional legal advice should be sought.

Petitions and other forms regarding the termination of parental rights and adoptions are available online at [www.ctprobate.gov](http://www.ctprobate.gov). Click on "Forms." Forms are also available at the Probate Courts.

## **TERMINATION OF PARENTAL RIGHTS**

### **What Is Meant by "Termination of Parental Rights"?**

That term means the complete severance by Probate Court order of the legal relationship between the child and his or her parent or parents, with all its rights and responsibilities, so that the child is free for adoption.

Once terminated, parental rights can never be restored.

### **Who Can Seek the Termination of Parental Rights?**

Any of the following parties may petition in the Probate Court district where the child or the petitioner resides:

- (1) Either or both parents, including a parent who is a minor (under age 18)
- (2) The guardian of the child
- (3) The select person of any town having charge of any foundling child
- (4) A duly authorized officer of a child-care or child-placing agency or any children's home or similar institution approved by the Commissioner of the Department of Children and Families (DCF)
- (5) A relative of the child if the parent or parents have abandoned or deserted the child
- (6) The Commissioner of DCF, provided the custodial parent of the child has consented to the termination of parental rights, and the child has not been committed to the Commissioner, and no petition for commitment has been made

A child who has attained the age of 12 must also join in the petition.

### **Where Is a Petition for Termination of Parental Rights Filed, and What Information Must Be Provided?**

A petition for termination of parental rights must be filed in the Probate Court for the district in which the petitioner or the child resides, or in the case of a minor who is under the guardianship of any child-care facility or child-placing agency, in the Probate Court for the district in which the main office or any local office of the agency is located.

The petitioner must provide the following information under oath:

- (1) The child's name, sex, date and place of birth and present address.

- (2) The petitioner's name and address and his or her relationship to the child.
- (3) The names, birth dates and addresses of the parents and guardians of the child, including that of the putative father or the father named by the mother (If the parent is less than 18 years old, include the names and addresses of that child's parents.)
- (4) Other important information requested in the Petition/Termination of Parental Rights, PC-600.

If a parent consents to termination, he or she must also complete an Affidavit/Consent to Termination of Parental Rights, JD-JM-60.

## **Procedures for Termination of Parental Rights**

### *Notice of Hearing*

Within 30 days of the filing of the petition, the Probate Court must hold a hearing on such petition. There are two exceptions to this requirement. First, if a DCF investigation has been ordered, the hearing will be continued until the investigation is complete. Second, if a parent has given consent to the termination of his or her parental rights, the hearing must be held within 20 days of receipt of the petition. The court must provide at least 10 days' notice to all interested parties, including the following:

- (1) Both parents
- (2) The father of a minor child born out of wedlock if, *at the time of filing*, any proper court has already declared him to be the father, **or** he has acknowledged *in writing* to be the father, **or** he has regularly supported the child, **or** his name appears on the birth certificate, **or** he has filed a claim of paternity in a Probate Court **or** he has been named the father in the petition
- (3) The Commissioner of DCF
- (4) The Attorney General
- (5) The child's guardian
- (6) Any other person deemed appropriate by the Probate Court, including a minor if over age 12

### *Transfer to a Regional Children's Probate Court*

On its own motion or that of any interested party, the Probate Court may transfer any termination of parental rights case to a Regional Children's Probate Court.

### *Transfer to Superior Court*

Before a hearing is held on the merits of a contested termination of parental rights matter, either the Probate Court or any legal party (except the petitioner) may request the transfer of the case to Superior Court.

### *Appointment of Attorney*

Parents who are the subject of a termination of parental rights petition have the right to an attorney. If the parents cannot afford an attorney and submit a supporting affidavit to the court, the court will appoint an attorney for them without charge. If the parent is a minor or incompetent, the court must appoint an attorney to serve as guardian ad litem.

The court must appoint an attorney for the minor child in all cases involving child abuse or neglect. The court may also appoint an attorney for the child in other circumstances. It is the role of the attorney to advocate the child's stated position, if the child is of sufficient age and maturity to be able to formulate a position.

Under state law, the court may also appoint a guardian ad litem for the child if the court deems it appropriate. The guardian ad litem does not necessarily advocate the child's stated position, but rather the best interests of the child.

### *Investigation and Examination*

The court will normally require an investigation into the facts of the case, which will be conducted by a DCF social worker. If the matter is contested, the court **must** obtain an investigation. The purpose of the investigation, and the resulting written report, is to aid the court in determining the best interests of the child. Generally, a written report must be submitted to the court within 90 days of the request, and the court cannot hold a hearing on the merits of the petition until that report has been received. The parties and their attorneys have a right to review it upon request.

The court also has the power to order an examination of the child and/or the parents by a physician, psychiatrist or psychologist as an additional aid in assisting the court to determine what course of action is in the child's best interests.

### *Hearing*

The court will hold a hearing on the petition, and all interested parties and their attorneys will have the opportunity to offer evidence, examine and cross-examine witnesses and present arguments for their respective positions. Contested hearings are often recorded. Although the hearing may be relatively informal, the basic tenets of fundamental due process must be followed. All parties are well advised to be represented by competent legal counsel.

### *Grounds for Termination*

The petitioner has the legal duty to prove to the court, *by clear and convincing evidence*, that the termination is in the child's best interests, **and** one of the following grounds for termination exists:

- (1) The child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child.
- (2) The child has been denied, by reason of an act or acts of parental commission or omission, including, but not limited to sexual molestation and exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights.
- (3) There is no ongoing parent-child relationship, which is defined as the relationship that ordinarily develops as a result of a parent's having met, on a continuing, day-to-day basis, the physical, emotional, moral and educational needs of the child, and to allow further time for the establishment or reestablishment of the parent-child relationship would be detrimental to the best interests of the child.
- (4)
  - a. The child has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding **or**
  - b. The child is found to be neglected or uncared for and has been in the custody of the Commissioner of DCF for at least 15 months, and the parent has failed to achieve such a degree of personal rehabilitation that would encourage the belief that within a reasonable time, and considering the age and needs of the child, the parent could assume a responsible position in the life of the child.
- (5) The parent of a child under the age of seven who is neglected or uncared for has failed, is unable or is unwilling to achieve that degree of personal rehabilitation as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, that parent could assume a responsible position in the child's life **and** that parent's parental rights of another child were previously terminated pursuant to a petition brought by DCF.
- (6) The parent has deliberately killed or conspired to kill another of his or her children **or** has deliberately assaulted another of his or her children, resulting in serious bodily injury.

- (7) The parent was convicted as an adult or as a delinquent by a court of competent jurisdiction of sexual assault resulting in the conception of a child, except for a violation of C.G.S. sections 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction.
- (8) The parent consents to the termination. (If the parent is a minor, the minor's guardian ad litem must also consent.)

*Factors for the Court to Consider (except for consent cases)*

- (1) The timeliness, nature and extent of services designed to facilitate the reunion of parent and child, which are offered to the parent by DCF or another approved agency
- (2) The terms of any outstanding court order and the degree to which the parent has complied with those terms
- (3) The feelings and emotional ties of the child towards the parent and also towards others who have had custody or control of the child for at least a year and with whom the child has developed significant emotional ties
- (4) The age of the child
- (5) The efforts the parent has taken to adjust the parent's behavior or circumstances to facilitate the return of the child in the reasonably foreseeable future, including the contacts and communications the parent has had with the child
- (6) The extent to which the parent may have been prevented from seeing the child as a result of the unreasonable actions of others or the parent's economic circumstances

## **Effect of Termination**

Termination of parental rights results in the complete and permanent severance of the parent–child relationship and renders the child “free for adoption.”

If the rights of only one parent are terminated, the remaining parent becomes the sole legal parent and guardian of the child.

## **What Is a Statutory Parent?**

If the rights of **both** parents have been terminated, the court may appoint DCF or another approved child-placing agency as “statutory parent” for the purpose of giving the child in adoption. The statutory parent becomes the sole guardian of the child and is responsible for the child's welfare and protection, basically assuming the same

responsibilities that the parents once had. It is the role of the statutory parent to place the child in adoption, which will be discussed later.

If, however, an adoption is sought by a qualified relative of the child, the appointment of a statutory parent may not be required. Following termination of parental rights, the court could appoint a guardian of the person of the child, who would have the ability to place the child in adoption to a qualified relative.

## **What Happens to a Child When Both Parents' Rights Have Been Terminated?**

Both federal and state law require the guardian or statutory parent to report to the court on a case plan for the permanent placement of the child within 30 days of the entry of the termination decree and at least every three months thereafter until the plan is implemented. The court *may* hold a hearing when a report is filed; the court *must* hold a hearing to review the case plan within 12 months of the termination decree and annually thereafter until any adoption plan has been finalized.

## **What Is Permanent Guardianship?**

Permanent guardianship may, in some situations, provide an alternative to the termination of parental rights. It permits the placement of a child with a guardian on a permanent basis without the need to terminate the parental rights of the child's parents.

The appointment of a permanent guardian requires that the parents be removed as guardians in the manner provided by law. In addition, before appointing a permanent guardian, the court must find by clear and convincing evidence that:

- (1) One of the grounds for termination of parental rights exists, or the parents consent.
- (2) Adoption of the child is not possible or appropriate.
- (3) A child who is 12 or over consents.
- (4) If the child is under 12, the proposed permanent guardian is a relative or is already the permanent guardian of a sibling of the child.
- (5) The child has resided with the proposed permanent guardian for at least one year.
- (6) The proposed permanent guardian is suitable and worthy and is committed to remaining as permanent guardian until the child reaches age 18.



Once appointed, a permanent guardian has all the same powers and duties of any other guardian. However, following the appointment of a permanent guardian, the removed parents may not seek reinstatement as guardians, nor may they petition the court for the removal of the permanent guardian.

## **Special Immigrant Juvenile Status**

At any time during or after a termination of parental rights matter or an adoption matter, a party may file a petition requesting that the Probate Court make findings in connection with a petition to United States Citizenship and Immigration Services (USCIS) for the designation of a minor child as having special immigrant juvenile status. The minor child may be eligible to remain in the United States if USCIS grants this status.

The court may make SIJS findings at the time of, or following, a decree terminating parental rights or granting an adoption. The findings should include the following:

- (1) The age of the minor child
- (2) The marital status of the minor child
- (3) Whether the minor child is dependent upon the court
- (4) Whether reunification with one or both of the minor child's parents is viable
- (5) Whether it is not in the best interests of the minor child to be returned to the minor child's or parent's country of nationality or last habitual residence

## **PROBATE APPEALS**

Any person aggrieved by an order, denial or decree of the Probate Court may appeal to the Superior Court. In a termination of parental rights proceeding or an adoption proceeding, the appeal must usually be taken within **30 days** from the date of the order, denial or decree. However, there are two exceptions to this requirement:

- (1) If the person appealing from an order of termination of parental rights (other than an order of termination of parental rights based on consent) or from a decree of adoption has not received notice, the appeal must be taken within **90 days**.
- (2) An appeal from an order of termination of parental rights based on consent must be taken within **20 days**.

## **ADOPTION**

## What Is Adoption?

Adoption is a process by which the legal relationship of parent and child is established when that relationship does not exist biologically. In order for a child to be adopted, he or she must be “free for adoption” and “given in adoption” by a legally authorized individual or agency. With certain narrow exceptions, Connecticut does not allow the *direct* placement of children for adoption by individuals or unregulated adoption agencies. Only certain approved agencies and close relatives, under careful regulation, may offer a child for adoption.

## When Is a Child Free for Adoption?

A child is considered “free for adoption” (eligible to be adopted) when:

- (1) the child has no living parents, or
- (2) all parental rights have been terminated according to the laws of the applicable state or country.

There are special procedures involved for children born outside the United States. Please consult a licensed child-placing agency for further information.

## Who May Give a Child in Adoption?

The following parties may “give” (place) a child in adoption, subject to the approval of the Probate Court:

- (1) A statutory parent may give in adoption to any adult person.
- (2) A parent may give the child in adoption to his or her spouse or to another person who shares parental responsibility for the child, if:
  - a. the other parent has died or has had his or her parental rights terminated **or**,
  - b. the child was born out of wedlock, and the rights of the putative father have been properly terminated, **or**
  - c. the parent adopted the child as a single person.
- (3) A guardian of the person may give a child in adoption to a qualified relative of the child.

### What

#### Consent of Child:

The petition for any adoption will not be granted without the consent of the child, *if* the child has reached the age of 12.

### Effect Does

## **Divorce Have on an Adoption Procedure?**

A child of divorced parents is *not* automatically free for adoption, even when the Superior Court awards exclusive custody to one parent in a divorce action and that parent subsequently remarries. The Probate Court must first properly terminate the rights of the other divorced parent *before* the child can be given in adoption to the new stepparent.

## **What Is an Identified Adoption and When Is It Permitted?**

Generally, a child unrelated to proposed adoptive parents must be “placed” with those parents by DCF or a licensed child-placing agency. Except under very limited circumstances, a party seeking to adopt a child may not conduct his or her own search for, or “identify,” a child to adopt. Before taking any other steps, a party wishing to identify his or her own adoptee should contact DCF or a licensed child-placing agency to obtain information about the stringent requirements for an identified adoption and to assist with the adoption. Failure to follow these requirements may make it impossible for the adoption to take place.

## **How Does an Adoption Proceeding Begin?**

### *Petition*

A written petition (in duplicate), together with the adoption agreement (between the party “giving” the child in adoption and the party wishing to adopt) is filed in the Probate Court district where the adopting parent resides or where the statutory parent has an office. Forms are available from the Probate Court or on the Probate Court website at [www.ctprobate.gov](http://www.ctprobate.gov).

### *Investigation*

The Probate Court may order an investigation regarding the proposed adoption before holding a hearing. An investigation is required in a co-parent or relative adoption. Generally, DCF will not undertake those studies, due to budgetary constraints and the need to utilize its social workers for more pressing matters. Therefore, it is up to the petitioners to request their own study from an approved child-placing agency **and** to pay the cost of the study. If the petitioner is indigent, however, DCF will conduct the study. The study is undertaken for the purpose of ascertaining the overall needs of the child and the abilities of the adopting parent(s) to meet those needs. If a study is ordered, please be patient, since an adoption is one of the most important steps that both child and adopting parent can undertake, and the court wants to make sure that the child's best interests are served.

## *Hearing*

When the investigation has been completed and a written report rendered, the Probate Court will hold a hearing. Notice will be given to all interested parties, including DCF. If the court believes that the adoption is in the best interests **of the child**, it will approve the petition. The law provides that a petition shall not be denied solely due to the adopting parent's marital status or due to a difference in race, color, religion or sexual orientation between the child and adoptive parent.

## **Are Adoption Proceedings Open to the Public?**

The law requires that all adoption records be sealed from the public. Furthermore, only limited information concerning the genetic parents of any adopted child may be given to the adoptive parent by DCF or the child-placing agency. That information is general in nature, including such items as nationality, race and education of the biological parent, as well as his or her health and religious history. Detailed procedures are prescribed by law for the release of identifying information when the adopted person reaches the age of 18. (See C.G.S. section 45a-743, et. seq.)

Generally, anyone seeking such information must **first** request that information from the agency that originally placed the child. If the identity of that agency is unknown, the petitioner may ask the Adoption Resource Exchange or the court to provide the name of the agency.

## **What Is the Legal Effect of Adoption between the Child and Adoptive Parent?**

C.G.S. section 45a-731 spells out the legal effects of adoption in detail. Inheritance rights, in particular, may be complicated, and the statute itself should be read carefully. In general, an adoption decree:

- (1) Creates the relationship of parent and child between the two, as if the adoptive child were the natural child of the adopting parent
- (2) Relieves the natural parent whose rights were terminated of all parental rights and responsibilities
- (3) Creates a situation whereby neither the adopted child nor the natural parent will inherit from each other, unless either is specifically (by name) provided for by will. Otherwise, the adopting parent will inherit the estate of an adopted child and vice versa

**Please note:** A child may inherit from his or her *natural* parents if the rights of those parents have been terminated but no adoption was concluded.

## **May an Adult Be Adopted by Another Adult?**

Yes. Upon notice and after hearing, the Probate Court may approve an adult adoption if the court finds that the proposed adoptive parent and adopted person share a relationship that is similar to that between a parent and adult child and that the adoption is in the best interests of both parties. Generally, the spouse of the adoptive parent must consent to the adoption. A biological parent of the adopted person may join in the adoption agreement with the biological parent's spouse or one other person. The parental rights of a biological parent who does not join in the adoption agreement will be terminated. (A person may not have more than two legal parents.)

## **May an Adopted Person Access His or Her Original Birth Certificate?**

An adult adoptee, or the adoptee's adult children and grandchildren, may obtain a copy of the adopted person's original birth certificate if the adoption was finalized on or after October 1, 1983. The request should be made directly to the Department of Public Health and requires no Probate Court involvement.

If a person was adopted prior to October 1, 1983, the adopted person can petition the Probate Court to obtain an order for release of the original birth certificate. The court will issue an order only if it finds that both parents consent to the release or are deceased.

## **Who Should Be Contacted for Additional Information?**

For information concerning the placement of children available for adoption, you may contact your local DCF office or any licensed child-placing agency.